

Disciplinary Panel Hearing

Case of

**Mr Andrew Turvill [0091755]
Shrewsbury, UK**

On

Tuesday 4 and Wednesday 5 September 2018

At 55 Colmore Row, Birmingham, B3 2AA

Panel

Alison Sansome (Lay Chair)
Nick Hawkins (Lay Member)
Justin Mason (Surveyor Member)

Legal Assessor

Peter Steel

Representatives for the parties

Mrs Kelly Sherlock (Solicitor) appeared on behalf of RICS

Mr Simon Wilton (Counsel) appeared on behalf of Mr Turvill

Hearing Officer

Mrs Jae Berry

The formal charge is:

1. During the currency of a claim brought by David Bird, Kerry Bird, Hannah Bird and Joseph Bird ("Claimants"), against Swancote Developments ("Swancote") and Chartland LLP ("Chartland"), he acted with serious impropriety in that he:

- a. Gave instructions to Billy Hughes & Co to seek payment from an insurer and to misrepresent that payment was required to make a settlement offer when he knew no such offer would be made,
- b. As a consequence of his conduct, the insurer paid money under an incorrect premise,
- c. Having obtained money under an insurance policy, he allowed this entire sum to be paid to Billy Hughes and then liquidated Chartland preventing the Claimants from receiving any of this sum,
- d. Misled or attempted to mislead the court:
 - i. In denying he controlled the litigation on behalf of Swancote and Chartland,
 - ii. In denying he had decided to place Swancote and Chartland into liquidation before 18 February 2014,
 - iii. In respect of the “wrap around” deal email, in claiming he had been negotiating an all party deal since the summer of 2013,
 - iv. In denying he instructed money received from the insurance policy be used to pay Billy Hughes & Co.
- e. His conduct at a. and d. above was dishonest and/or lacked integrity,
- f. His conduct at c. above lacked integrity.

Contrary to Rule 3 of the Rules of Conduct for Members 2007 version 6.

Response

1. Mr Turvill denied the allegations in their entirety.

Background

2. Mr Turvill has been a Member of RICS since qualification on 28 May 1993. The complaint against him stemmed from a legal claim brought against two companies with which he was involved, Swancote and Chartland. The claimants in that action, the Birds, had purchased a new build property from Swancote on 29 January 2007. Swancote had engaged Chartland (which Mr Turvill owned together with a Mr Shaw and two other companies which in turn were controlled by Mr Turvill and Mr Shaw respectively) as project managers for the property. Mr Turvill also acted as agent for Swancote. Through a sub-contractor, a Mr Evans was hired as a surveyor for the project.
3. On 18 September 2009, the Birds brought an action against Swancote, Chartland and Mr Evans alleging that the property they had purchased from Swancote was defective and that dust in the property had caused them personal injury.
4. Chartland was insured by Royal Sun Alliance (RSA) in respect of the personal injury element of the claim against it. In 2011, RSA had offered Chartland £40,000 in settlement of its obligations under the policy, representing an amount of £12,000 in respect of the personal injury damages, £18,000 as a contribution to the Bird's legal costs and £10,000 in respect of Chartland's costs. That offer was not accepted. Shortly before the hearing of the claim, Billy Hughes of Billy Hughes & Co., a firm of solicitors acting at that point on behalf of Swancote and Chartland, wrote to RSA and asked whether it would increase this offer to £50,000. The letter mentioned the prospect of a "wrap around" deal, that is to say a comprehensive settlement involving Swancote, Chartland, Mr Evans and the Birds.
5. RSA responded on 14 February 2014 repeating the offer of £40,000 with a deadline for acceptance of 28 February. On instructions from Chartland, Billy Hughes wrote to RSA on 17 February 2014 accepting the offer. On the same day, he wrote to the solicitors acting for the Birds and proposed that they drop the claim against Swancote and Chartland with each side bearing their own costs to date. The letter indicated that both companies were to enter into liquidation as a result of the costs of the litigation and that neither had any funds or other available assets from which to meet any award of damages against them.
6. The £40,000 was paid into Billy Hughes & Co.'s client account. It was eventually applied to pay part of Billy Hughes' fees for representing Swancote and Chartland. The claim against Mr Evans was settled in advance of the trial in the matter, which began on 3 March 2014. On the same day, Swancote and Chartland both entered into liquidation. They did not therefore take part in the hearing.
7. The hearing concluded on 4 March 2014 with a judgment in favour of the Birds who were awarded the full amount they sought (£219,642.15 plus applicable VAT) as well as their legal costs.

8. The Birds applied for a non-party costs order against Mr Turvill as a result of his conduct in the litigation. Despite the fact that he was not named as a party to the proceedings, they sought a court order that he be liable for a proportion of the costs. The hearing of this application took place on 20 October 2014 and resulted in an order that Mr Turvill pay the Birds £30,000 in respect of their costs.
9. The court heard from a number of witnesses in deciding the non-party costs application, including Mr Turvill himself. The judge hearing the application stated in his judgment that he found Mr Turvill's evidence to be "...unreliable and when it conflicts with evidence from other witnesses and in some cases the clear terms of contemporaneous or third party documents, I reject it." The judge's adverse findings concerning Mr Turvill's evidence and his conduct in the litigation form the basis of the allegations set out above. In particular, the judge stated:

"In my judgment, the RSA monies were...morally the Claimants' money. Certainly as far as £30,000 of that sum was concerned. In deliberately deciding to, in a neutral sense, prefer to pay Billy Hughes & Co. the monies rather than leave them in the bank account of Chartland, Mr Turvill has, in my judgment, acted outside the ordinary run of cases and his conduct in the particular respect does, in my judgment, make it just to impose an order for non party costs in the sum of £30,000."

10. Mr Turvill appealed this decision. The Court of Appeal dismissed the appeal on 11 July 2016.

Hearing

11. RICS did not call any witnesses and relied on the judgment of Mr Recorder Singer dated 20 October 2014, the transcript of the non-party costs application and other documents and correspondence as proof of the allegations.
12. Mr Billy Hughes gave evidence on behalf of Mr Turvill. Mr Turvill also gave evidence on his own behalf.

Findings of Fact

13. The Panel carefully considered all the evidence presented to it, including the oral evidence referred to above, as well as the submissions by Mrs Sherlock on behalf of RICS and Mr Wilton on behalf of Mr Turvill. The Panel accepted the advice of the legal assessor, in particular as to the probative value of the judgment of Mr Recorder Singer in *Bird & Others v Swancote Developments and Others* dated 20 October 2014 (the judgment in the non-party costs application against Mr Turvill which was the main evidence produced by RICS in support of the allegations).

14. The Panel noted that under Rule 41d. of the Disciplinary, Registration and Appeal Panel Rules 2009 version 7, the finding of a court in the United Kingdom or elsewhere shall be admissible as prima facie evidence of the facts found. It determined that the correct approach to the treatment of such evidence was to be found in the cases of *Choudry v Law Society* [2001] EWCA Civ 1665 and *Constantinides v Law Society* [2006] EWHC 725 (Admin). In both of these cases, the court considered the use of prior judgments containing criticism of solicitors which had been introduced in proceedings before the Solicitors Disciplinary Tribunal. The Panel considered that the following principles applied:

- (1) Rule 41d. provided that the Singer judgment dated 20 October 2014 could stand as evidence, or proof, of the findings against Mr Turvill.
- (2) The Panel could give determinative weight to such a judgment, as happened, with the Court of Appeal's approval, in *Choudry*.
- (3) Whether it is appropriate to give determinative weight to a prior judgment will depend on the "particular circumstances" of the given case as per *Constantinides*.
- (4) Factors which would incline a panel to give determinative weight to a prior judgment include:
 - (a) whether the member played "a full part at the hearing that gave rise to the [prior] judgment": see paragraph 22 of *Choudry*;
 - (b) whether the factual allegations made in the proceedings leading to the prior judgment are sufficiently similar to those faced by the member.
- (5) Where a prior judgment is admitted under the Rules, this places an evidential burden on the member of showing that the prior judgment was not correct (which is again derived from paragraph 22 of *Choudry*).

15. This latter point was acknowledged by Mr Wilton, who called Mr Turvill and Mr Hughes to give evidence and drew the Panel's attention to a number of emails that were not before Mr Recorder Singer during the hearing of the non-party costs application.

16. Having considered the evidence and the correct approach to such evidence, the Panel found as follows:

1. *During the currency of a claim brought by David Bird, Kerry Bird, Hannah Bird and Joseph Bird ("Claimants"), against Swancote Developments ("Swancote") and Chartland LLP ("Chartland"), he acted with serious impropriety in that he:*

- a. *Gave instructions to Billy Hughes & Co to seek payment from an insurer and to misrepresent that payment was required to make a settlement offer when he knew no such offer would be made,*

Not proved. The Panel heard evidence from Mr Hughes (the solicitor who acted for or advised Swancote and Chartland at various points during the claim and subsequently acted for Mr Turvill in the non-party costs application) and from Mr Turvill, to the effect that the motivation behind seeking to revive the RSA offer was indeed to attempt to effect a settlement between all parties in the litigation. This was supported by an email dated 29 January 2014 between Mr Turvill and Mr Hughes in which the former reminded Mr Hughes of the RSA offer of 2011 and added: “...it affords us the opportunity to potentially give an ultimatum to the other side. Take the money that we have been able to negotiate from our insurers or we’ll pull the plug and you’ll get nothing.” Mr Turvill told the Panel that he had not provided this evidence in the non-party costs application, because the suggestion that he had always intended to pay the RSA monies to Mr Hughes was not one of the grounds on which the costs order was sought against him. This evidence was not rebutted by RICS. The Panel therefore considered that in so far as the Singer judgment supported this allegation, Mr Turvill’s account was to be preferred.

- b. *As a consequence of his conduct, the insurer paid money under an incorrect premise,*

Not proved. The Panel considered that this allegation was contingent on a positive finding under allegation. a. above. Since allegation a. had not been found proved, this allegation fell away.

- c. *Having obtained money under an insurance policy, he allowed this entire sum to be paid to Billy Hughes and then liquidated Chartland preventing the Claimants from receiving any of this sum,*

Not proved. Mr Hughes told the Panel that he had exercised a lien for his fees over the money sitting in the Chartland client account on 5 March 2014. He did so on his own initiative, without seeking authorisation from any of the members of the firm. Chartland had in any event gone into liquidation on 3 March 2014. This meant that Mr Turvill had no control over Chartland as at the date the monies were appropriated. In consequence this allegation was not made out.

- d. *Misled or attempted to mislead the court:*
- i. *In denying he controlled the litigation on behalf of Swancote and Chartland,*

Not proved. It was not evident to the Panel that Mr Recorder Singer had at any point in his judgment dated 20 October 2014 made a finding that Mr Turvill had misled or attempted to mislead the court. However, in any event the Panel noted from the transcript of the hearing that Mr Turvill had in fact accepted that he controlled the litigation on behalf of Swancote and Chartland at various points in the chronology of the claim.

ii. In denying he had decided to place Swancote and Chartland into liquidation before 18 February 2014,

Not proved. Mr Turvill was not a director of Swancote and therefore was not responsible for its management. The evidence of Mr Turvill and Mr Hughes was that although they were contemplating the liquidation of Chartland prior to 18 February 2014 (as is clearly shown by the correspondence produced to the Panel), no decision had been made to liquidate the firm until after the Birds had rejected the “drop hands” offer on 17 February 2014. The Panel accepted that evidence.

iii. In respect of the “wrap around” deal email, in claiming he had been negotiating an all party deal since the summer of 2013,

Not proved. The evidence of Mr Turvill, supported by some limited documentary evidence, was that he had in fact made periodic attempts to agree a settlement position with the other involved parties in respect of the Birds’ claim from the summer of 2013 onwards. Again, the Panel accepted this evidence, which was not rebutted by RICS.

iv. In denying he instructed money received from the insurance policy be used to pay Billy Hughes & Co.

Not proved. As described above, Mr Hughes’ evidence was that he had exercised a lien over the monies in client account on his own initiative.

e. His conduct at a. and d. above was dishonest and/or lacked integrity,

f. His conduct at c. lacked integrity.

Not proved. These allegations fell away as a result of the Panel’s findings above.

17. The Panel noted Mr Wilton’s submission in his closing statement to the effect that it was understandable why RICS had brought disciplinary proceedings against his client in the light of the comments contained in the Court of Appeal judgment. The Panel agreed and did not consider that the proceedings had been improperly brought.

Liability to Disciplinary Action

18. In light of the Panel's findings on the facts, the question of liability to disciplinary action did not arise.

Publication

19. The Panel has considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website and in the RICS magazine Modus.

Costs

20. There was no application for costs by either party.

Appeal Period

21. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days, from the service of the notification of the decision, to require a review of this Decision.